On behalf of the respondent I have been asked to make two presumptions. Firstly, I am asked to presume that the witness was "a police officer authorized in writing in that behalf" under sub-section (1) of section 39 of the Ordinance. But when a police officer is entitled to exercise a certain power only if he is authorized in writing in that behalf it is incumbent upon him to satisfy the Court that he was so authorized and to produce the evidence of his authority. Nevertheless absence of evidence that he had authority to require the appellant to allow his vehicle to be weighed under the provisions of section 39(1) might not have been fatal to this conviction if there had been evidence that the weight recorded by the dial was in fact the true weight. And here I was asked to make the second presumption: namely that the weight recorded by the dial should be presumed to be the correct weight. In this connexion I must express my disagreement with the learned Magistrate when he says that "the clerk in charge of the weighbridge could not even be considered as a material witness as he might or might not have been present at the time the weighing was done." The importance of the evidence would have been that he, as the man in charge of the weighbridge, could have given evidence of its accuracy and could have informed the Court when it was last tested. The onus is upon the prosecution to prove that what they allege to be the weight is in fact the correct weight. It is therefore essential that weighbridges or weighing machines which are to be used for this purpose should be regularly tested, and that there should be some evidence from which their accuracy can be either proved or presumed. If a certificate had been put in that this weighbridge had been tested on a certain date and found to be correct, it might have been possible to presume that it was correct on the day in question. But here there was no evidence at all which related to the accuracy of this weighbridge, from which a Court could presume that the weight recorded by the dial was correct.

I have no doubt that if the learned Magistrate had been referred to the Johore case of *Sim Ah Man v. Public Prosecutor*[1] he would have come to a different conclusion. The following passage from the judgment of Laville, J. appears to me to set out the correct view of the matter, and I would respectfully adopt it for the purpose of this appeal:—

"As the whole foundation of the prosecution case in charges of over-weight or under-weight depends on the accurate and proper functioning of the machines used to estimate it, it appears reasonable that it should be part of the onus thrown on the prosecution to prove that what they allege to be the weight is the correct weight. In order to do this it is necessary to prove that the methods employed to ascertain it, whether mechanical or otherwise, are accurate when tested by the standard weights of the country. Once the machines and the weights are certified as correct, or proved to be correct, the Court may under section 114 of the Evidence Enactment presume the continuance of correctness for a reasonable period until the presumption is rebutted by the accused."

A distinction was sought to be drawn between that case and the present case in that in the Johore case the machine in question was a weighing machine which was kept in a Police Station and in the present case it is a weighbridge which is the property of the City Council. I know of no reason for making a distinction, and it seems to me that the passage which I have quoted is equally applicable to both. The point is that when persons are charged with offences relating to overweight or underweight there must be some evidence to prove that the machine, which recorded the weight alleged by the prosecution, is accurate, or some evidence from which its accuracy can be presumed. Here there was none.

The appeal is allowed and the conviction and sentence quashed.

*Appeal allowed.*

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## BERENGER v. ROZARIO (m.w.).

[O. C. J. (Whitton, J.) July 1, 1953]

[Singapore — Suit No. 1033 of 1952]

*Contract —Illegal and immoral contract — Motor car — Conversion — Immoral association — Public policy.*

As a general rule a man's right to possession of his own chattels will be enforced against one who, without any claim of right, is detaining them, or has converted them to his own use, even though it may appear from the pleadings, or in the course of the trial, that the chattels in question came into the defendant's possession by reason of an illegal contract between himself and the plaintiff, provided that the plaintiff does not seek, and is not forced, either to found his claim on the illegal contract, or to plead its illegality in order to support his claim.

[**Editorial Note:** — No action can be brought for the purpose of enforcing an illegal contract either directly or indirectly, or of recovering a share of the proceeds of an illegal transaction, by any of the parties to it. Where the object of a contract is illegal the whole transaction is tainted with illegality, and no right of action exists in respect of anything arising out of the transaction. In such a case the maxim **In pari delicto, portior est conditio defendentis** applies, and the test for determining whether an action lies is to see whether the plaintiff can make out his claim without relying on the illegal transaction to which he was a party. Halsbury 2nd Ed. Vol. VII p. 173.]

*Case referred to:—*

(1) *Bowmakers Ltd. v. Barnet Instruments Ltd.* (1945) 1 K.B. 65; (1944) 2 All E.R. 579.

CLAIM FOR CHATTELS WRONGLY DETAINED.

*N. N. Leicester* for the plaintiff.

*David Marshall* for the defendant.

*Cur. Adv. Vult.*

The facts and arguments appear sufficiently from the judgment.

**Whitton, J.** : — The plaintiff met the defendant, a married woman who had been separated from her husband for several years, at a party in Singapore in October 1951. He developed an infatuation for her, and soon conceived the idea of getting the defendant to live with him, with the possibility of ultimate marriage if she could obtain a divorce. To this end he arranged further meetings at which he promised her various benefits calculated to improve her material position and security, if she would fall in with his proposal. One of the things he promised her was a new car. The defendant at the time was living with another man, but after a period of indecision eventually agreed to live with the plaintiff. On the 9th January 1952 the plaintiff moved into premises at Telok Kurau occupied by the defendant, and cohabited with her there until the following August. During the first few months their association was apparently harmonious, but towards the middle of the year differences led to quarrels, and, in spite of some attempts at reconciliation, the couple finally separated on 13th August, when the plaintiff left the house at Telok Kurau after a further quarrel. None of these facts are in dispute.

The present proceedings arise out of a claim by the plaintiff for the return of a car and certain clothing he alleges are wrongfully detained by the defendant. The car is the important issue in the case. It is common ground that in pursuance of his promise to give the defendant a car the plaintiff, who is employed by the City Council, applied to the City Council, in January 1952, for a loan to purchase a car; that his application was approved; and that in April 1952 a Hillman car was purchased by the plaintiff and registered in his name. With regard to this purchase the plaintiff says he told the defendant earlier on that he would have to get a loan to buy the car, while the defendant says he did not tell her until after he had moved into her house at Telok Kurau. I do not think this point is of any great importance, especially as it is clear the defendant was aware at the time of the purchase that payment was to be effected by the loan obtained from the City Council. The main question to be decided at this point is whether there was ever a gift of the car at any time by the plaintiff to the defendant. It is plain the only way such gift may have been made was by delivery. Mr. Berenger who gave his evidence with considerable frankness firmly maintains he made it clear the car could not become the defendant's until after the loan was paid off. Mrs. Rozario equally strongly maintains that the plaintiff gave it to her as a gift from the day delivery was taken of it. My conclusion on the matter is that, whatever else Mr. Berenger may have done to win and later to retain the affections of the defendant, and this included paying over most of his salary to her, making her the beneficiary of his insurance, and subsequently the sole beneficiary of his will, he did not lose sight of the dangers that might arise from a breach of his agreement with the City Council, and that he never purported to make a perfected gift of the car to the defendant, even though he may well have used words indicating the car was hers with a view to satisfying her desire to own the car. His own statements on this point are, on the whole, I think borne out by the circumstantial evidence. In that connection I think that it is improbable the plaintiff would have risked his position with the City Council by any act which might have led to a violation of his loan agreement, and, as I have indicated, the view I have formed is that he exercised in this matter a caution which was not otherwise characteristic of him at that time. Again I feel that the admitted retention of the car keys by the defendant and her obvious anxiety to maintain strict control of the plaintiff's use of the car points to a state of doubt in her mind which one would scarcely expect if Mr. Berenger had led her to believe confidently the car was hers subject to a more or less formal interest of the City Council. It is to be observed this attitude of anxiety on the part of defendant appears to have existed throughout from the day the car was delivered until the plaintiff left her house. I believe the plaintiff may well have told her the car was hers subject to the lien of the City Council, and that he certainly promised to give her the car absolutely after the loan was paid off, but I am not prepared to hold it has been proved he either intended or effected any delivery, actual or constructive, which amounted to a perfected gift.

The next matter to consider is whether the plaintiff's claim must fail by reason of the maxim *In pari delicto, potior est conditio possidentis.* It is obvious that the contract between the parties was an immoral one, and it is also obvious that it was incidental to such contract that the defendant got possession of the car. The issue depends then on the scope of this maxim. There is no doubt that if the plaintiff's claim was based on the contract to cohabit it would necessarily fail. Mr. Leicester contends that the plaintiff does not claim on the contract, but on his title. I accept

this contention. But in so doing he has had to disclose the immoral contract, and to concede that the defendant's retention of the car is a direct consequence of it. The point, therefore, arises must these circumstances defeat the plaintiff's claim to relief? It has been laid down in the fairly recent case of *Bowmakers Limited v. Barnet Instruments Limited*[1] that "as a general rule a man's right to possession of his own chattels will be enforced against one who, without any claim of right, is detaining them, or has converted them to his own use, even though it may appear from the pleadings, or in the course of the trial, that the chattels in question came into the defendant's possession by reason of an illegal contract between himself and the plaintiff, provided that the plaintiff does not seek, and is not forced, either to found his claim on the illegal contract, or to plead its illegality in order to support his claim". I am of the opinion the present claim falls within this category.

Again it is, of course, well known that the reason the law will not enforce an illegal or an immoral contract is that it is contrary to public policy to do so. I can scarcely think I should be serving the interests of public policy if I were to hold that the defendant, who, I consider, is not entitled to the car on any other ground, should have it because she obtained possession of it as a result of an immoral association between her and plaintiff.

For these reasons I think the plaintiff's claim for possession of the car should succeed, and I give judgment for him accordingly. As regards the other articles claimed I feel complete doubt in view of the sparse and contradictory evidence on the matter as to whether they are in the defendant's possession, and I make no order on this part of the claim. Costs to the plaintiff.

*Claim allowed.*

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## LIM KHOON SEAH
v.
## LIM LEAN TENG & ORS.

[O. C. J. (Buhagiar, J.) September 23, 1953]

[Penang — Civil Suit No. 237 of 1951]

*Landlord and tenant — Licence — Notice of rights in respect of land — Whether licence is revocable.*

The 1st defendant in 1949 by an agreement granted the plaintiff the right to collect all the squatters' rents, coconuts, fruits and other crops (except the rubber and fruits from trees grown after the signing of the agreement) on a piece of land for a term of 5 years commencing from May 1st, 1949 for an annual rental of $500. By an indenture made on April 10th, 1951 the 1st defendant conveyed the land in question to the 2nd, 3rd and 4th defendants, the purchasers. The plaintiff was ejected from the said land and in this case he asked for an injunction and for damages against the four defendants.

There were three points to be determined in the case: (i) whether the 1949 agreement between the plaintiff and the 1st defendant constituted a lease or a licence; (ii) whether the purchasers had notice of the plaintiff's right in respect of the land when they purchased it from the 1st defendant; (iii) if the said agreement was a licence, whether it was revocable or not.

**Held:** (1) the agreement constituted a licence (**Wijesuriya v. A.G. for Ceylon**[1] followed); (2) on the evidence, the purchasers had actual notice of the existing licence in favour of the plaintiff; (3) a licence granted for a fixed period could not be revoked before the expiration of the period for which it was granted provided that it was specifically enforceable in equity either in an action for specific performance or by way of injunction (**Hurst v. Picture Theatres**[4]) followed).

In the present case the licence was granted for a specified period and was also enforceable in an injunction and therefore was not revocable.

*Cases referred to:—*

(1) *Wijesuriya (H. E.) v. Attorney-General for Ceylon* (1950) A.C. 493.

(2) *Winter Garden Theatre (London) Ltd. v. Millennium Productions Ltd.* (1948) A.C. 173.

(3) *Wood v. Leadbitter* (1845) 13 M. & W. 838.

(4) *Hurst v. Picture Theatres* (1915) 1 K.B. 1.

(5) *James Jones & Sons Ltd. v. Earl of Tankerville* (1909) 2 Ch. 440.

INJUNCTION AND CLAIM FOR DAMAGES.

*Sonni Pillai* for the plaintiff.

*C. D. D. Hogan* for the 1st defendant.

*Lee Ah Seong* for the 2nd and 4th defendants.

*Cur. Adv. Vult.*

**Buhagiar, J.** : — By an agreement dated the 25th April, 1949 the 1st defendant granted the plaintiff the right to collect all the squatters' rents, coconuts, fruits and other crops (except the rubber and fruits from trees grown after the signing of the agreement) on a piece of land for a term of five years commencing from the 1st May, 1949 for an annual rental of $500. By an indenture made on the 10th April, 1951 the 1st defendant conveyed the land in question to the 2nd, 3rd and 4th defendants (hereinafter referred to as "the purchasers"), the 2nd and 4th defendants acquiring each two equal undivided fifths shares and the 3rd defendant one equal undivided fifth share of the land. The plaintiff was ejected from the said land and is now asking for an injunction and for damages against the four defendants. Since the institution of these proceedings the 3rd defendant has died.

There are three points to be determined in this case, namely (a) whether the agreement of the 25th April, 1949 between the plaintiff and the 1st defendant constitutes a lease or a licence; (b) whether the 2nd,